

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BARTH DENNIS CAPELA,

No. C 07-04734 SBA (PR)

Petitioner,

**ORDER GRANTING IN FORMA  
PAUPERIS STATUS AND DENYING  
MOTION FOR APPOINTMENT OF  
COUNSEL**

v.

BOB HOREL, Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner also seeks leave to proceed in forma pauperis. He has also requested appointment of counsel in this action.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or

1 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either  
2 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial  
3 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas  
4 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only  
5 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent  
6 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th  
7 Cir. 1965).

8 At this early stage of the proceedings the Court is unable to determine whether the  
9 appointment of counsel is mandated for Petitioner. Accordingly, the interests of justice do not  
10 require appointment of counsel at this time, and Petitioner's request is DENIED. This denial is  
11 without prejudice to the Court's sua sponte reconsideration should the Court find an evidentiary  
12 hearing necessary following consideration of the merits of Petitioner's claims.

13 Petitioner's application to proceed in forma pauperis is GRANTED. The Court will review  
14 Petitioner's habeas petition in a separate written Order.

15 This Order terminates Docket nos. 2 and 3.

16 IT IS SO ORDERED.

17 Dated: 5/7/08

18   
SAUNDRA BROWN ARMSTRONG  
UNITED STATES DISTRICT JUDGE

United States District Court  
For the Northern District of California

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 BARTH DENNIS CAPELA,

5 Plaintiff,

6 v.

7 BOB HOREL et al,

8 Defendant.  
9 \_\_\_\_\_/

Case Number: CV07-04734 SBA

**CERTIFICATE OF SERVICE**

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
11 Court, Northern District of California.

12 That on May 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
15 in the Clerk's office.

16 Barth Dennis Capela  
17 V-58262  
18 California State Prison - Solano  
19 P.O. Box 4000  
20 Vacaville, CA 95696

21 Dated: May 8, 2008

22 Richard W. Wieking, Clerk  
23 By: LISA R CLARK, Deputy Clerk  
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